IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8384 of 2001

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BOMBAY MERCANTILE COOPERATIVE BANK LTD. - Petitioner(s)

Versus

HANIF I SHAIKH - Respondent(s)

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Appearance :
NANAVATI ASSOCIATES for Petitioner(s) : 1,
MS RUKHSANA M PATHAN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/12/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 17th July 2001 passed by the Labour Court, Ahmedabad, in Reference (ITC) No.147 of 1999, directing the petitioner to reinstate the respondent with 25% back

wages.

2. The short facts leading to the filing of the present petition are as under:

2.1 The respondent was serving as a Peon with the petitioner bank. The respondent remained absent from duty on various occasions. A chargesheet was, therefore, issued to the respondent and a departmental inquiry was conducted. Ultimately the respondent was dismissed from service. The appeal filed by the respondent before the Appellate Authority was dismissed. The respondent, therefore, raised a dispute, which was referred to the Labour Court, Ahmedabad and registered as Reference (ITC) no.147 of 1999. The Labour Court after hearing the parties passed the award in question.

2.2 Mr. Keyur Gandhi appearing for the petitioner submitted that the respondent was in the habit of remaining absent without prior permission and therefore the Labour Court ought not to have reinstated the respondent workman. He further submitted that the charges against the respondent were proved and there was no justification for grant of back wages.

3. Ms. Ruksana Pathan appearing for the respondent submitted that the Labour Court has considered all the facts and circumstances of the case, and the Labour Court has granted only 25% back wages. Therefore, there is no case for interference by this Court.

4. As a result of the hearing and perusal of the record it is found that the Labour Court has found that on the facts of the case dismissal of the respondent from service is not in consonance with the misconduct of the respondent and dismissal is a harsh punishment for the misconduct of remaining absent from duty without prior intimation. I am in complete agreement with the reasonings adopted and findings arrived at by the Labour Court for reinstatement.

5. However, I am of the view that looking to the misconduct the punishment imposed upon the respondent is lower side. The respondent has remained absent from duty on many occasions for almost five years. Therefore I am of the view that while substituting the order of dismissal the Labour Court ought to have imposed a punishment of stoppage of five increments with future effect. Further, the Labour Court has granted back wages without application of mind. The law on the

subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order.

6. In the premises aforesaid, the petition is partly allowed. The award granting back wages is quashed and set aside. Instead of punishment of imposition of two increments with future effect, a punishment of imposition of stoppage of five increments with future effect shall be imposed upon the respondent. The award of the Labour Court is modified to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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